

medical treatment for his left ankle injury until May 4, 1995 when he went to HCA Wesley Medical Center Emergency Room because of increased pain. Claimant testified that his ankle worsened after the initial injury even though he was not working. Claimant received subsequent medical treatment with Charles D. Pence, M.D., at the Wichita Clinic and J. Stanley Jones, M.D. an orthopedic surgeon. The medical records do not indicate that claimant attributed the left ankle injury to his work with the respondent until his first visit with Dr. Jones on May 22, 1995. Claimant admits that he did not notify the respondent that he was claiming a work-related injury until the day after he went to see Dr. Jones which was May 23, 1995, some thirty-nine (39) days after his accident.

The Administrative Law Judge denied claimant's request for preliminary compensation benefits, finding that the claimant failed to give notice of his work-related accident within ten (10) days and also claimant had not shown just cause for failure to give notice of the accident within ten (10) days. See K.S.A. 44-520. For preliminary hearing purposes, the Appeals Board affirms the Administrative Law Judge's decision. The Appeals Board finds that the preliminary hearing record established the claimant did not give notice of his work-related accident to the respondent that occurred on April 13, 1995 until May 23, 1995 which exceeds the ten (10) day notice requirement contained in K.S.A. 44-520.

For the following reasons, the Appeals Board further finds that claimant failed to establish just cause for not giving the respondent notice of his accident within ten (10) days. The claimant injured his left ankle on April 13, 1995, which was the first day that he had worked for the respondent. On April 10, 1995, the claimant signed a form entitled Acknowledgement of Incident Procedures which specifically instructed the claimant to notify his supervisor immediately of any accident that occurred on the job. Claimant also was familiar with workers compensation claim procedures as he testified that he previously settled two (2) workers compensation claims. The accidental injury that claimant suffered while working for the respondent did not occur gradually over a period of time but was a result of one (1) single traumatic event. Although claimant did have to leave town a few days after his accidental injury to be with his mother, he testified that he was frequently in contact with the respondent while he was out of town and still he failed to report his accidental injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark dated August 10, 1995 should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Joseph Seiwert, Wichita, Kansas
 D. Steven Marsh, Wichita, Kansas
 John D. Clark, Administrative Law Judge
 Philip S. Harness, Director